

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:19-CT-03231-FL

JERMAINE ANTWAN TART,)	
)	
Plaintiff,)	
)	MOTION, <i>NUNC PRO TUNC</i>, TO
v.)	DEEM ANSWER TIMELY FILED
)	
MARK TROCK, et al.,)	
)	
Defendants.)	

NOW COMES Defendant Mark Trock, through the undersigned counsel, *nunc pro tunc*, seeking to have Defendant's answer to Plaintiff's complaint (DE-1) deemed timely filed as of November 4, 2020. In support of this motion, Defendant shows unto the Court the following:

1. Plaintiff in this action is an inmate in the custody of the North Carolina Department of Public Safety ("the Department"), and filed this action on August 2, 2019. DE-1.
2. On May 14, 2020, the Court completed its frivolity review and directed the Clerk to continue management of the case. DE-16.
3. On May 14, 2020, the Court issued a request for waiver of service for Defendant Trock to the Department.
4. On July 15, 2020, the undersigned filed a notice under seal providing Defendant Trock's last known address as he was out on medical leave.
5. Staff from the undersigned's office contacted Defendant Trock to advise him to be on the lookout for service and to contact the undersigned if and when service is achieved.
6. Today, November 10, 2020, staff from the undersigned office was checking the docket and noticed that Defendant Trock had been served on October 14, 2020, thereby making his answer due on November 4, 2020.

7. However, because Defendant Trock had not contacted the undersigned's office, the undersigned was not aware that he had been served and that a responsive pleading deadline had been set.

8. Thus, the undersigned regrettably failed to answer or otherwise respond to Plaintiff's complaint on or before the November 4, 2020, deadline.

9. Rule 6(b) of the Federal Rules of Civil Procedure provides that "when an act may or must be done within a specified time, the court may, for good cause, extend the time . . . on motion made after the time has expired if the party failed to act because of excusable neglect." Whether neglect is excusable "is at bottom an equitable [determination], taking account of all relevant circumstances surrounding the party's omission," including "the danger of prejudice to the [nonmoving party], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395, 113 S. Ct. 1489, 123 L. Ed. 2d 74 (1993).

10. The failure of the undersigned to file an Answer on behalf of Defendant was due to excusable neglect as the undersigned was not aware that service had been effectuated and a responsive pleading deadline established until today when staff discovered service while reviewing the docket.

11. The proceedings will not be negatively impacted by the Court's acceptance of the Answer on behalf of Defendant and deeming it timely filed.

12. Because Plaintiff is an incarcerated inmate, the undersigned has not contacted him to obtain his position regarding the requested relief.

13. However, the undersigned respectfully suggests that Plaintiff would not be prejudiced if Defendant's motion to have his contemporaneously filed answer deemed timely filed is allowed.

WHEREFORE, for the reasons set forth above, for good cause shown, and in the interests of justice, Moving Defendant respectfully requests that the Court grant his Motion, *Nunc Pro Tunc*, to Deem Answer to Plaintiff's Complaint Timely Filed, and consider the Answer timely filed as of November 4, 2020.

This the 10th day of November, 2020.

JOSHUA H. STEIN
ATTORNEY GENERAL

/s/ Orlando L. Rodriguez
Orlando L. Rodriguez
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed **DEFENDANT'S ANSWER AND DEFENSES** with the Clerk of the Court using the CM/ECF system. I also certify that, on this date, I on November 12, 2020, I will serve this document on all non-CM/ECF participant(s) by depositing a copy in the U.S. mail, postage paid, addressed as follows:

Jermaine Antwan Tart, *pro se*
OPUS No. 0803377
Maury Correctional Institution
P.O. Box 506
Maury, NC 28554

This the 10th day of November, 2020.

/s/ Orlando L. Rodriguez
Orlando L. Rodriguez
Special Deputy Attorney General